

**Notice of Allowability**

<b>Application No.</b> 09/673,274	<b>Applicant(s)</b> LAMBERTY ET AL.	
<b>Examiner</b> Samuel W Liu	<b>Art Unit</b> 1653	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

- 1.  This communication is responsive to 9-7-04 and 7-2-04.
- 2.  The allowed claim(s) is/are 1,3,4,8-19,22,46,47,51-53 and 55.
- 3.  The drawings filed on 12 October 2000 are accepted by the Examiner.
- 4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some\*    c)  None    of the:
    - 1.  Certified copies of the priority documents have been received.
    - 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

- 5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  - 6.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
    - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
- 7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- 1.  Notice of References Cited (PTO-892)
- 2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
- 4.  Examiner's Comment Regarding Requirement for Deposit of Biological Material
- 5.  Notice of Informal Patent Application (PTO-152)
- 6.  Interview Summary (PTO-413), Paper No./Mail Date 11-17-04.
- 7.  Examiner's Amendment/Comment
- 8.  Examiner's Statement of Reasons for Allowance
- 9.  Other \_\_\_\_\_.

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### DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1 November 2004 has been entered.

This Office action is in response to (i) applicants' amendment (to the specification) filed 7 September 2004 which add the sequence identifiers to the peptide sequences: Leu-Leu-Arg-Gly-Tyr-Lys-Gly-Gly-His-(page 4, [0013]), -Asn-Gly-Glu and Ala-Ala-Glu-(page 5, [0017]), NH<sub>2</sub>-Ala-Ala-Ala-Ala-Gly-Ser-( page 5, [0022]), and, Ser-Leu-Asp-Lys-Arg-(page 7, [0031]); and (ii) applicants' amendment filed 2 July 2004, which cancels claims 2, 5-7, 20-21, 23-45, 48-50 and 54, and amends claims 1, 3-4, 9, 11-12, 14, 47 and 52. The amendment indicated above has been entered. Also, the applicants' request (filed 1 November 2004) for extension of time of three months has been entered. It is of note that amendment (filed 7 September 2004) to claim 1, change "Ans" to "Asn" has been entered because the said amendment is supported by the specification (see page 6, line 12), and thus does not constitute new matter. The pending claims 1, 3-4, 8-19, 22, 46-47, 51-53 and 55 are therefore examined in this Office action.

### EXAMINER'S AMENDMENT

An Examiner's Amendment to the record appears below. Should the change and/or additions be unacceptable to Applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than payment of the Issue Fee.

Authorization for this Examiner's Amendment was given in a telephone interview with Rochelle K. Seide on November 17, 2004. Applicants agree the Examiner proposed amendment to claims 1, 3, 8, 10-11, 14, 51-52 and 55 (see below).

#### **Amendments to the claim:**

The pending claims 1, 3, 8, 10-11, 14, 51-52 and 55 have been amended or canceled as follows. Please replace the previous claims with the claim shown below.

Claim 1 (*Twice amended*): After, "1 to 10 amino acid residues," change "at least one of which ..." to "wherein at least one of said residues ...".

Claim 3 (*Amended*): Change "4 basic amino acids" to "4 amino acid residues".

Claim 8 (*Amended*): Change "1 amino acid, and X<sub>ac</sub>" represents 1 acidic amino acid" to "one amino acid residue, and X<sub>ac</sub>" represents one acidic amino acid residue".

Claim 10 (*Amended*): After "-Asn-Gly-Glu-" add "(SEQ ID NO: 50)".

Claim 11 (*Amended*): Under "Xaa ...", change "one acidic amino acid" to "one acidic amino acid residue"; and under "Xag ...", change "1 amino acid residue" to "one amino acid residue".

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Claim 14 (*Amended*): After "either of its ends" add "(N-terminus and C-terminus)".

Claim 51 (*Amended*): Change "one acidic amino acid" to "one acidic amino acid residue".

Claim 52 (*Amended*): After "Xaa'-Gly-Xaa'- ", delete "(SEQ ID NO:42)".

Claim 55 (*Amended*): After "-Glu-Xag' ", delete "(SEQ ID NO:45)".

**Amendments to the specification:**

Figure 1: A DNA unit resulting from the hybridization of the oligonucleotides which is flanked by the HindIII and BglII restriction sites for constructing pSEA1 plasmid.

Figure 2: The schematic structure of the plasmid pRTL-2 GUS.

Figure 3: A schematic structure of an expression cassette for synthesizing a PR-1 $\alpha$ -helioimicine fusion protein.

Figure 4: A fragment of the plasmid pRPA-RD 195 which shows a modified cloning site of an expression vector comprising the cassettes for expression of an *Agrobacterium tumefaciens*.

Figure 5: The schematic structure of pRPA-RD-174, wherein "nos" represents the *Agrobacterium tumefaciens* nopaline synthase polyadenylation site; "NOS pro" represents the *Agrobacterium tumefaciens* nopaline synthase promoter; "NPTII" represents the *E. coli* Tn5 transposon neomycin phosphotransferase gene, "35S pro" represents the 35 S promoter isolated from the cauliflower mosaic virus; "BRX" represents the nitralase gene isolated from *K. ozaenae*; and, "LB" represents the right and left borders respectively of the sequence of an *Agrobacterium tumefaciens* Ti plasmid.

Figure 6: The schematic structure of the plasmid pRPA-RD-184 wherein the terms "nos", "NPT-II", "NOS pro", 35 S pro", "BRX gene", RBX" and "LB" have the same meaning as in Figure 5.

*Conclusion:* Claims 1, 3-4, 8-19, 22, 46-47, 51-53 and 55 are allowable over the art of record.

Any comments considered necessary by applicants must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

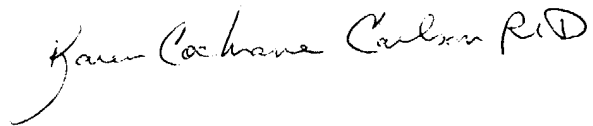
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Samuel Wei Liu, Ph.D. whose telephone number is (571) 272-0949. The Examiner can normally be reached daily except alternate Fridays from 8:30 A.M. to 5:30 P.M. If attempts to reach the Examiner by telephone are unsuccessful,

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the Examiner's supervisor, Jon Weber, can be reached at (571) 272-0925. The official fax number for Technology Center 1600 is (703) 308-4242. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.



Samuel W. Liu, Ph.D.  
Art Unit 1653, Examiner  
November 17, 2004



KAREN COCHRANE CARLSON, PH.D.  
PRIMARY EXAMINER